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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,134	08/20/2003	Anton Gaile	298-209	5331
28249	7590	04/28/2005	EXAMINER	
DILWORTH & BARRESE, LLP 333 EARLE OVINGTON BLVD. UNIONDALE, NY 11553			KRAMER, DEVON C	
			ART UNIT	PAPER NUMBER
			3683	

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/644,134

Applicant(s)

GAILE, ANTON

Examiner

Devon C Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2005.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.  
4a) Of the above claim(s) 15, 19-24 and 26 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-11, 14-18 and 27 is/are rejected.  
7) ☒ Claim(s) 12 and 13 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/25/04 1/15/04 +.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

- 1) Applicant's election of species 1 in the reply filed on 2/9/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
- 2) Claims 19-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/9/05.

### *Specification*

- 3) Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "**means**" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

- 4) The disclosure is objected to because of the following informalities:

Page 1 paragraph 2 line 4, "by which of which said sensors the desired vehicle height is adjusted" should be --by use of the sensors, the desired vehicle height is adjusted--;

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Page 5 paragraph 2, line 1 "Adjustment by means of hydraulic cylinder can be done manually" should be –Adjustments of the hydraulic cylinder can be done manually–.

Please note that the specification, though clear for examination purposed, is replete with grammatical errors and should be rewritten to correct these errors.

Appropriate correction is required.

### ***Claim Objections***

5) Claims 1-14, 16-18, 25 and 27 are objected to because of the following informalities:

Claims 1, 14, 16, and 25 line 2, "the bogie and the body of the rail car" should be –a bogie and a body of a rail car–. Please note that claim 27 recites a similar phrase, which requires correction;

Claim 1 line 4, "the other component" should be –the other of the piston and cylinder–;

Claim 1 lines 4-5, "the cylinder piston space" should be –a cylinder piston space—

Claim 2 line 3, "the strut adjustment area" should be –a strut adjustment area–.

The claims in the instant application are replete with claim objections. Because of the number of claim objections throughout, the examiner has only listed a few above. Applicant is required to amend the claims to ensure there are not any further claim objections.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6) Claims 2-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In re claims 2 and 4, it is unclear what applicant is intending to claim because the valve and sensor are positively recited as being part of the strut, wherein claim 1 recites the two in the alternative.

***Claim Rejections - 35 USC § 102***

7) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8) Claims 1-11, 14, 16-18, 25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Niikura et al (4858898).

In re claims 1-5, 10, 14, 16, 18, 25 and 27, Niikura et al provides a spring element with a hydro pneumatic strut capable of being positioned between a bogie and a body of a rail car, the strut comprising: a sliding piston (bottom of 23) in a cylinder (26), a cylinder piston space connected to a hydraulic accumulator (48, 104), the strut having a hydraulic height regulator valve (102) with a feedback loop so the position of the piston can be adjusted.

In re claim 6-9 and 17, see 42 and 49.

In re claim 11, see 101.

***Allowable Subject Matter***

9) Claims 12-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and further amended to correct any claim objections.

***Conclusion***

10) The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Popjoy, Sekine et al, French et al, Beck, Miller et al, Fukumura et al, Ezure et al, and Kuriki et al all provide piston cylinder devices with a means to level or change the position of the piston.

11) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devon C Kramer whose telephone number is 571-272-7118. The examiner can normally be reached on Mon-Fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Devon C Kramer  
Examiner  
Art Unit 3683

DK

**DEVON C. KRAMER**  
**PATENT EXAMINER**

*Devon Kramer*  
*4/25/05*